

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

NETLIST, INC.,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 2:22-cv-203-JRG
)	
MICRON TECHNOLOGY, INC.; MICRON)	JURY TRIAL DEMANDED
SEMICONDUCTOR PRODUCTS, INC.;)	
MICRON TECHNOLOGY TEXAS LLC,)	
)	
Defendants.)	
)	

**DEFENDANTS’ REPLY IN SUPPORT OF ITS MOTION FOR
RECONSIDERATION OF THE COURT’S AUGUST 29, 2023 ORDER [ECF
158] GRANTING-IN-PART AND DENYING-IN-PART DEFENDANTS’
MOTION TO COMPEL PRODUCTION OF CERTAIN MATERIALS
FROM NETLIST’S SK HYNIX LITIGATION AND NEGOTIATION
DOCUMENTS [ECF 135]**

Micron respectfully files this short reply brief in support of its motion for reconsideration (ECF 168).

I. SK HYNIX LICENSE MATERIALS

Micron’s request is properly based on newly discovered evidence. Netlist’s diligence argument (ECF 196 at 2) is belied by the procedural history of the case. Micron has been requesting production of the *Samsung* litigation materials since the beginning of the case at least as early as January 10, 2023. Rueckheim Decl., ¶ 2. Netlist significantly delayed that production, ignoring Micron’s multiple requests, only to ultimately dump approximately 100,000 pages of documents and other materials into production in June 2023, a time when the parties were very busy with claim construction and significant fact discovery activities. Rueckheim Decl., ¶ 3. In

light of Netlist's unwarranted delay in producing this highly relevant information, Micron was diligent in identifying this information.

The requested information is highly relevant. Netlist argues against relevance by stating that "Micron takes the quoted testimony out of context." ECF 196 at 2. Not so. To reduce the burden on the Court in deciding related issues, Micron incorporates by reference Samsung's showing of relevance as stated in Case No. 2:21-cv-293-JRG, Dkt. 168. To summarize: Netlist put the relevance of the negotiation materials at issue and the materials are likely to be key in determining whether the settlement agreements accurately reflect the inventions value or were strongly influenced by a desire to avoid or end litigation. *Id.* at 5-6.

Netlist's reference to whether Micron produced comparable license negotiation materials is a strawman. ECF 196 at 3. Netlist is not asking the Court to compel Micron to produce those materials. Nor has Netlist identified any unique relevance for those types of materials.

II. SK HYNIX EXPERT MATERIALS

Netlist makes two arguments against reconsideration – both are misplaced.

First, Netlist argues that Micron waived its request by not previously arguing that the materials are "a party admission exception to hearsay and admissible FRE 801(d)(2)(B)-(D)." Not so. Netlist never previously argued that the materials are hearsay. *See* ECF 148. The first time the issue was raised was by the Court at the very end of the August 22, 2023 hearing: "As to other experts, it's never been my impression of the law that the opinion of an expert is binding on the party in a different case, but I'll take a look at that and see if that has changed." Hrg. Tr. at 52:23-53:1. Micron properly moved for reconsideration and identified applicable law.

Second, Netlist argues that "Micron's argument is based on a misrepresentation of the law." ECF 196 at 3. Not so. Micron identified applicable law in its opening brief. Netlist's

citation to *HTC Corp. v. Telefonaktiebolaget LM Ericsson*, 12 F.4th 476 (5th Cir. 2021), on the other hand, is inapposite. ECF 196 at 3. *HTC* involved a question of whether a statement is a “party admission” under Fed. R. Evid. 801(d)(2)(c) and did not address the question of FRE 802(d)(2)(B) & (D). *Id.* at 489.

Dated: October 4, 2023

Respectfully submitted,

/s/ Michael R. Rueckheim

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 4th day of October 2023 the foregoing document was electronically filed with the Clerk of Court using the Court's CM/ECF system, which will send notification of such filing to all counsel of record, including counsel of record for Plaintiff Netlist.

/s/ Michael R. Rueckheim
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